

NOT SUBJECT TO PROTECTIVE ORDER



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SA/SDD/RMT
F.# 2012R01574

271 Cadman Plaza East
Brooklyn, New York 11201

April 5, 2013

Via ECF and Hand

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Re: United States v. Ahmed et al.
Criminal Docket No. 12-661 (S-1)(SLT)

Dear Counsel:

Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, please find enclosed with this letter supplemental discovery ("Rule 16 Materials") in the above-referenced matter. This disclosure supplements the government's prior disclosures of November 26, 2012, January 21, 2013 and a second disclosure dated April 5, 2013. Please also consider this letter to be the government's request for reciprocal discovery.

I. The Government's Discovery

The government hereby provides certain Rule 16 Materials to the defendants that are not subject to the protective order in this case. The relevant documents attached hereto are dated 4/5/2013, marked NOT SUBJECT TO PROTECTIVE

ORDER, and are provided subject to the Court's modification of the unclassified protective order entered in this case.

A. August 1, 2006 - Interview of MAHDI HASHI at Heathrow Airport

On or about August 1, 2006, MAHDI HASHI was interviewed by law enforcement at Heathrow airport after having been deported from Cairo, Egypt for reported visa irregularities. A redacted copy of a report related to that interview is bates-numbered 1-3 and provided only to MAHDI HASHI. Materials recovered from HASHI at the time of the interview are provided under separate cover pursuant to the protective order entered in this case. Bates numbers 4-20 are intentionally omitted.

B. The United States Department of State Designates al-Shabaab as a Foreign Terrorist Organization

On February 26, 2008, the United States Department of State designated al-Shabaab (a/k/a al-Shabab, a/k/a Shabaab, a/k/a the Youth, a/k/a Mujahidin al-Shabaab Movement, a/k/a Mujahideen Youth Movement, a/k/a Mujahidin Youth Movement, a/k/a MYM, a/k/a Harakat Shabab al-Mujahidin, a/k/a Hizbul Shabaab, a/k/a Hisb'ul Shabaab, a/k/a al-Shabaab al-Islamiya, a/k/a Youth Wing, a/k/a al-Shabaab al-Islaam, a/k/a al-Shabaab al-Jihaad, a/k/a the Unity of Islamic Youth) as a Foreign Terrorist Organization (FTO) under Section 219 of the Immigration and Nationality Act, as amended, and as a Specially Designated Global Terrorist (SDGT) under Section 1(b) of Executive Order 13224, as amended. The designation was published in the Federal Register on March 18, 2008. "Shabaab" is an Arabic word that means "Youth" and is in common use in the Somali language. A copy of the publication of the designation was previously provided to you in discovery.

C. April 5, 2008 - al-Shabaab Declaration

On or about April 5, 2008, al-Shabaab publicly declared the following:

To the other mujahideen included in the American terrorist list: O' mujahideen brothers! . . . May you be successful in your jihad and may you frustrate the

enemies. May Allah help you Please know, our beloved ones, that we are going through a crucial stage, in which the oppressors have crossed the line. That is why we call upon you to round up and join forces under one leadership and a uniform flag in order to frustrate the enemies of Allah and execute his command. . . . As a result, our jihad will be stronger and more harmful to our enemies.

In conclusion, we say to the patron and protector of the cross, America: the wager that you made on the Ethiopians, Ugandans, and Burundians in Somalia was a failure, and history has proven it. Allah willing, we will attack them, roam [through their ranks], cut off every path they will take, chase away those who follow them, and fight them as insects and wolves. [We] will give them a taste of the heat of flame, and throw them into hell.

An electronic copy of that declaration is attached hereto on a CD bates-numbered 188.

D. April 8, 2008 Suicide Bombing Attack on Burundian Peacekeepers

Al-Shabaab publicly claimed responsibility for a suicide bombing attack on Burundian peacekeepers in Mogadishu on April 8, 2008. An electronic copy of that declaration is attached hereto on a CD bates-numbered 188.

E. May 2008 - Declaration by al-Shabaab

After an al-Shabaab member was killed by what al-Shabaab believed to be a United States missile attack in or about May 2008, al-Shabaab leaders declared that the mujahideen would "hunt the U.S. government" and that governments supporting the United States and Ethiopia should keep their citizens out of Somalia. An electronic copy of that declaration is enclosed herein on a CD bates-numbered 188.

F. May 6, 2008 - Interview of ALI YASIN AHMED

On or about May 6, 2008, law enforcement representatives interviewed ALI YASIN AHMED on a voluntary basis in Sweden. During that interview, AHMED denied having plans to travel to Somalia or otherwise support al-Shabaab. Redacted summary reports regarding the statements made by AHMED during the interview are bates-numbered 21-26 and provided only to ALI YASIN AHMED.

G. May 7, 2008 - MAHDI HASHI Interview at Heathrow Airport

On or about May 7, 2008, MAHDI HASHI was interviewed by law enforcement at Heathrow airport upon his return from Damascus, Syria. Redacted summary reports regarding the statements made by HASHI during the interview are bates-numbered 40-46 and provided only to MAHDI HASHI. Materials recovered from HASHI at the time of the interview are provided under separate cover and subject to the protective order in the case. Bates numbers 47-80 are intentionally omitted.

H. October 2008 - December 2008 - Interception of Communications Involving ALI YASIN AHMED and MOHAMMED YUSUF

In or about and between October 2008 and December 2008, conversations involving ALI YASIN AHMED and MOHAMMED YUSUF, while they remained in Sweden, were intercepted pursuant to lawful orders of a Swedish Court. During those conversations, AHMED and YUSUF discussed, among other things, their intention to travel to Somalia for the purpose of joining al-Shabaab and dying as martyrs. Warrants issued by a Swedish Court and redacted reports related to the interceptions are attached hereto and bates-numbered 27-39. Reports and audio recordings of AHMED, YUSUF and the defendants' associates, while HASHI, AHMED and YUSUF were fighting with al-Shabaab in Somalia, will be provided under separate cover subject to the protective order in this case. Additional interceptions of AHMED, YUSUF and the defendants' associates will also be provided at a later date.

I. October 2008 - Al-Shabaab Suicide Attacks in Boosaaso and Hargeisa

Al-Shabaab claimed responsibility for five simultaneous suicide bombings in Boosaaso and Hargeisa targeting Somali government, Ethiopian, and United Nations facilities in October 2008. An electronic copy of that declaration is attached hereto on a CD bates-numbered 188. YUSUF and AHMED discussed these suicide attacks in detail during intercepted communications prior to departing for Somalia to fight with al-Shabaab.

A United States citizen from Minnesota, identified as Shirwa Ahmed, participated in one of the suicide bombings in Boosaaso. A stipulation regarding Shirwa Ahmed's participation in the suicide bombing in Boosaaso is attached hereto and bates-numbered 83-85. Additional materials related to those suicide bombings will be provided to you under a separate cover and subject to the protective order in this case.

J. Surveillance of MOHAMMED YUSUF and ALI YASIN AHMED in Sweden

Prior to their departure from Sweden, in 2008, MOHAMMED YUSUF and ALI YASIN AHMED were surveilled by law enforcement. A redacted report related to surveillance of YUSUF and AHMED is attached hereto and bates-numbered 81-82.

K. December 2, 2008 - MOHAMMED YUSUF and ALI YASIN AHMED Depart Sweden for Somalia to Join al-Shabaab

Redacted reports related to MOHAMMED YUSUF and ALI YASIN AHMED's December 2, 2008 departure from Sweden en route to Somalia to fight with al-Shabaab are attached hereto and bates-numbered 86-88.

L. February 22, 2009 - al-Shabaab Suicide Attack on Burundian Peacekeepers

Al-Shabaab publicly claimed responsibility for a suicide bombing attack on Burundian peacekeepers on February 22, 2009. An electronic copy of that declaration is attached hereto on a CD bates-numbered 188.

M. April 2009 - Al-Shabaab Declaration

In or about April 2009, al-Shabaab publicly declared that it was responsible for mortar attacks against a United States Congressman who had been visiting Somalia. An electronic copy of that declaration is attached hereto on a CD bates-numbered 188.

N. April 1, 2009 - Statement of MAHDI HASHI at Gatwick Airport

On April 1, 2009, MAHDI HASHI was interviewed at Gatwick Airport while attempting to travel to Somalia to fight with al-Shabaab. A redacted report of that interview is bates-numbered 97-99 and provided only to MAHDI HASHI. Materials obtained from HASHI are attached hereto and bates-numbered to 100-110.

O. December 3, 2009 - Suicide Bombing of the Hotel Shamo in Mogadishu, Somalia

On December 3, 2009, al-Shabaab carried out a suicide bombing attack of the Hotel Shamo in Mogadishu, Somalia. An electronic copy of public videos related to that bombing is attached hereto on a CD bates-numbered 186. During an intercepted communication, ALI YASIN AHMED indicated he was an associate of the suicide bomber responsible for the bombing of the Hotel Shamo.

P. July 2010 Coordinated Suicide Bombings in Kampala, Uganda

Al-Shabaab has publicly taken responsibility for a series of coordinated suicide bombings in Uganda in July 2010 targeting crowds gathered to watch the World Cup soccer tournament. An electronic copy of that declaration is attached hereto on a CD bates-numbered 188. An electronic copy of public videos related to those bombings is attached hereto on a CD bates-numbered 187. Those suicide attacks resulted in deaths and serious injuries to over a hundred persons. One U.S. citizen was killed and a number of additional U.S. citizens were injured.

Q. 2011 - MAHDI HASHI, MOHAMMED YUSUF and ALI YASIN AHMED's Enrollment in an al-Shabaab Suicide Bomber Training Program

In or about 2011, after having participated in significant military operations fighting on behalf of al-Shabaab, MAHDI HASHI, MOHAMMED YUSUF and ALI YASIN AHMED enrolled in an al-Shabaab suicide bomber training program in Somalia.

R. May 30, 2011 - Suicide Bombing Attack involving FARAH MOHAMED BELEDI

On May 30, 2011, al-Shabaab carried out a suicide bombing attack on a Federal Transitional Government checkpoint in Mogadishu, Somalia. A United States citizen from Minnesota, identified as Farah Mohamed Beledi was positively identified as having participated in the attack. Beledi was a member of al-Shabaab who was closely associated with the defendants. Publicly available photographs of the suicide bombing attack involving Beledi are attached hereto and bates-numbered 111-134. Publicly available audio recordings of the suicide bomber are attached hereto and bates-numbered 185. Beledi also participated in an al-Shabaab suicide bomber training program.

S. February 2012 - al-Shabaab Alliance with al-Qaeda

In early 2012, representatives of al-Shabaab and al-Qaeda released a video purporting to announce an alliance between the two organizations. In the video, Mukhtar Abu al Zubayr, also known as "Ahmed Abdi Aw Mohamed," and "Godane," a reputed leader of al-Shabaab, pledged al-Shabaab's allegiance to al-Qaeda, and to Ayman al Zawahiri, al-Qaeda's named successor to Usama Bin Laden. In an address directed at Zawahiri, Zubayr announced:

O our beloved Emir, on behalf of my brothers in al Shabaab al Mujahideen Movement, commanders and soldiers, I say: We give allegiance to you to follow the Book of Allah and the Sunnah [traditions] of His Messenger, to listen and obey in good and bad, to have altruism and not dispute with people in their fields except when we see clear unbelief that is proven in the revelation from Allah as much as we can . .

. . Lead us on the path of martyrdom and jihad, on the steps drawn by our martyred Imam Usama [bin Laden].

Zawahari responded stating that the:

Jihadi movement is growing...despite the fiercest Crusader campaign in history launched by the West against Muslims. . . . Today, I have pleasing glad tidings for the Muslim Ummah that will please the believers and disturb the disbelievers, which is the joining of the Shabaab al Mujahideen Movement in Somalia to Qaedat al Jihad, to support the jihadi unity against the Zio[nist]-Crusader campaign and their assistants amongst the treacherous agent rulers who let the invading Crusader forces enter their countries.

An electronic copy of that declaration is attached hereto on a CD bates-numbered 188.

T. Records Related to MAHDI HASHI's U.K. Passport and Immigration Status

Redacted records related to MAHDI HASHI's U.K. passport and immigration status are attached hereto bates-numbered 140-158 and provided only to MAHDI HASHI.

U. MOHAMMED YUSUF'S Swedish Passport

A copy of MOHAMMED YUSUF's Swedish passport is attached hereto and bates-numbered 159-163.

V. Voice Identification Analysis Regarding MOHAMMED YUSUF's appearance in "Inspire the Believers"

A redacted copy of a report related to voice identification analysis conducted regarding MOHAMMED YUSUF's appearance in the publicly produced al-Shabaab media production titled "Inspire the Believers" is attached hereto and bates-numbered 164-181.

***W. Additional Passport Information Regarding MOHAMMED YUSUF
and ALI YASIN AHMED***

Reports related to information regarding MOHAMMED YUSUF and ALI YASIN AHMED's passports are attached hereto and bates-numbered 182-184.

X. Additional Materials

Additional materials are provided under separate cover and subject to the protective order entered in this case.

You may call me to arrange a mutually convenient time to inspect, copy, and/or photograph the evidence and original documents discoverable under Rule 16

II. Criminal History

A redacted criminal history report provided by the United Kingdom regarding MAHDI HASHI bates-numbered 135-139 is provided only to MAHDI HASHI.

III. Reports of Examinations and Tests

The government will also provide you with copies of reports of examinations or tests conducted in connection with this case as they become available.

A report related to a voice identification analysis conducted in connection with MOHAMMED YUSUF is attached hereto and referred to above.

IV. Expert Witnesses

The government will comply with Fed. R. Crim. P. 16(a)(1)(G) by notifying you in a timely fashion of any expert the government intends to call at trial and by providing you with the expert's credentials and a summary of the expert's opinion.

V. Brady Materials

The government is aware of and will comply with its obligation to produce exculpatory material or information within

the scope of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

Before trial, the government will furnish information or material regarding payment, promises, immunity, leniency or preferential treatment, if any, given to prospective government witnesses within the scope of Giglio v. United States, 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264 (1959). The government will furnish before trial information or material regarding any prior convictions of any co-conspirator, accomplice or informant who may be testifying at trial for the government.

The government will also furnish before trial materials discoverable pursuant to Title 18, United States Code, and Section 3500.

VI. The Defendants' Discovery

The government hereby requests reciprocal discovery under Rule 16(b) of the Federal Rules of Criminal Procedure. The government requests that the defendants allow inspection and copying of (1) any books, papers, documents, photographs, tapes, tangible objects, or copies or portions thereof, which are in either defendant's possession, custody or control, and which either defendant intends to introduce as evidence or otherwise rely on at trial, and (2) any results of reports or physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in either defendant's possession, custody or control, and which either defendant intends to introduce as evidence or otherwise rely upon at trial or which were prepared by a witness whom either defendant intends to call at trial.

The government also requests that the defendants disclose prior statements of witnesses who will be called by the defendant to testify. See Fed. R. Crim. P. 26.2. In order to avoid any unnecessary delay, we request that you have copies of these statements available for production to the government no later than the commencement of trial.

The government also requests that the defendants disclose a written summary of testimony the defendants intend to use under Rules 702, 703, and 705 of the Federal Rules of Evidence. The summary should describe the opinions of the

witnesses, the bases and reasons for those opinions, and the witnesses' qualifications.

If you have any questions or further requests, please do not hesitate to contact us.

VII. Plea Offers

Please be advised that, pursuant to the policy of the Office concerning plea offers and negotiations, no plea offer is effective unless and until made in writing, signed by authorized representatives of the Office and authorized by the National Security Division of the Department of Justice. In particular, any discussion regarding the pretrial disposition of a matter that is not reduced to writing and signed by authorized representatives of the Office cannot and does not constitute a "formal offer" or a "plea offer," as those terms are used in Lafler v. Cooper, 132 S. Ct. 1376 (2012), and Missouri v. Frye, 132 S. Ct. 1399 (2012).

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By: _____/s/_____
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Enclosures

cc: Clerk of Court (SLT) (w/o enclosures)